

SEP 18 1988

Person to Contact: [REDACTED]

Telephone Number: [REDACTED]

Refer Reply to: [REDACTED]

Dear Applicant:

We have completed our consideration of your application for exemption from Federal income tax under section 501(c)(1) of the Internal Revenue Code.

You are incorporated as a tax-profit corporation and your amended Articles of Incorporation provide that you are organized exclusively for charitable, religious, educational and scientific purposes.

The record shows that you are a subsidiary of an organization called [REDACTED], which is a tax-exempt organization described in section 501(c)(1) of the Code. You share facilities and staff with the [REDACTED], but conduct programs and activities separate and apart from those carried on by [REDACTED].

According to your application, your primary activity is the providing of counseling services at full fee of \$[REDACTED]/\$[REDACTED] per hour. Your services are designed to accommodate those persons able to pay full fees. All of your support is from fees for services. Consultation services are also available to businesses and other organizations in the areas of management problems, program development, and staff development. Individual counseling includes marriage, family, and career counseling. As a part of the counseling process, psychological testing and evaluation may also be provided. Two of your psychologists/therapists are paid on a commission basis of [REDACTED]% of fees collected, while the third is paid a salary of \$[REDACTED] per month plus a commission of [REDACTED]% of fees collected over \$[REDACTED] per month.

You also provide, under contract, certain consulting and administrative services for [REDACTED]. The direct recipient of such services are clients of [REDACTED].

Any profits from your operations are to be distributed to [REDACTED]. According to information you submitted, your reasons for formation are: to develop additional sources of revenue to support the indigent services provided by [REDACTED] (full-fee clients are apparently reluctant to use the services of [REDACTED] because of visibility or lack of privacy), and to provide a place where the [REDACTED] staff can earn extra income.

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
		[REDACTED]					
Surname		[REDACTED]					
Date		9-16					

Section 501(c) of the Code describes certain organizations exempt from Federal income tax under section 501(a) and reads, in part, as follows:

"(1) Corporations, *** trust, or foundation, organized and operated exclusively for religious, charitable, scientific, *** literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of the activities involved the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals; no part of the net earnings which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

Section 1.501(c)(3)-1 of the regulations provides, in part, as follows:

"(a)(1) In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt."

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that:

"An organization will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3)..."

Section 1.501(c)(3)-1(d)(1)(i) of the Income Tax Regulations provides that all the organizations there described must serve a public rather than a private interest.

The providing of counseling and related services may, under the proper circumstances, further a charitable or educational purpose. Revenue Ruling 63-71, 1963-1 C.B. 249 found that an organization providing free vocational counseling and career planning qualified for exemption. Most support was from donations, but some support was received from nominal charges for publications distributed to clients. Revenue Ruling 69-441, 1969-2 C.B. 115 holds that an organization providing credit counseling for low-income individuals at no charge qualifies for exemption. Revenue Ruling 70-640, 1970-2 C.B. 117 determined that an organization providing marriage counseling and related workshops and seminars qualified for exemption. Support was from area churches, firms and donations. Revenue Ruling 73-369, 1973-2 C.B. 173 states that an organization offering free counseling to women regarding ways to resolve unwanted pregnancies also qualifies for exemption. It was supported by

denations. Revenue Ruling 74-595, 1974-2 C.B. 164 holds that an organization providing free counseling for men regarding voluntary sterilization methods qualifies for exemption. The organization was supported by denations. Finally, Revenue Ruling 73-99, 1973-1 C.B. 152 found that an organization providing counseling to widows to assist them in legal, financial and emotional problems qualifies for exemption. The organization was supported by denations from the general public and by fees. Fees were based on the ability of the widows to pay.

Comen to all definitions of charity in the characteristic of broad public benefit. There must be a direct benefit to the community at large. We believe that your operations are clearly distinguishable from those of the organizations described in the above rulings. Your primary activity is the provision of counseling and consultant services on a full-fee basis. Your services are not directed towards any charitable class, but are specifically directed towards those able to pay full fees. Your psychologists are paid on a commission basis, which is a characteristic of a commercial firm with an objective of maximizing profits. Rather than serving a charitable or educational purpose, you are primarily operated for the purpose of providing services on a commercial basis.

Section 501 of the Code provides that an organization operated for the primary purpose of carrying on a trade or business for profit shall not be exempt from taxation under section 501 on the grounds that all of its profits are payable to one or more organizations exempt from taxation under section 501. Accordingly, you will not qualify for exemption merely on the basis that your profits are payable to Guidance Center of Lea County, Inc.

Therefore, because you are not operated exclusively for charitable or educational purposes, exemption under section 501(c)(3) of the Code is denied. You should file Federal income tax returns for all years due.

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6015 in the enclosed self-addressed envelope as soon as possible.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 992 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this letter, then, this proposed determination will become final.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7423(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the District Court of the United States for the District of

[REDACTED]
Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If this determination letter becomes a final determination, we will notify the appropriate State Officials, as required by section 6104(c) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).

If you have any further questions, please contact the person whose name and telephone number are shown at the top of this letter.

Sincerely,

[REDACTED]
District Director

Enclosures:

Form 6013

Publication 992